IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

SARA B. DENUZIO,	:	APPEAL NO. C-150489 TRIAL NO. A-1402265
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
ZEKE Z. ZEKOFF, DVM, d.b.a. TOWNE SQUARE ANIMAL CLINIC,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a jury trial, defendant-appellant Zeke Z. Zekoff, DVM, d.b.a. Towne Square Animal Clinic, appeals from the trial court's judgment in favor of plaintiff-appellee Sara B. DeNuzio on her claim that Dr. Zekoff had terminated her employment after she had retained counsel to investigate workplace and pregnancy-related discrimination.

Answering special interrogatories, the jury found that Dr. Zekoff had terminated DeNuzio in retaliation for a letter sent by her attorney on March 27, 2013, complaining that Dr. Zekoff had treated her badly, alleging pregnancy discrimination, and suggesting a money payment to end her employment. The jury further found that DeNuzio was entitled to $27,165 in back pay and $35,000 in noneconomic damages. The trial court entered judgment on those verdicts. The jury separately returned a defense verdict on

DeNuzio's punitive-damage claim. The trial court had earlier granted summary judgment in favor of Dr. Zekoff on DeNuzio's pregnancy-discrimination claim.

In his first assignment of error, Dr. Zekoff argues that the trial court erred in refusing to instruct the jury on the honest-belief rule. The rule arises in employee-discipline cases where the factual basis for the employer's decision and the quality of his investigation of the matter are at issue. *E.g., Ceglia v. Youngstown State Univ.*, 2015-Ohio-2125, 38 N.E.3d 1222, ¶ 45 (10th Dist.). The rule provides that if an employer honestly, but mistakenly, believes in the reason given for terminating an employee, then the employee cannot establish that the action was a pretext for discriminatory termination. *Id.* Dr. Zekoff asserts that his receipt of a report, from a long-serving employee, of violations of clinic and veterinary policy by DeNuzio provided him with non-discriminatory reasons for discharge.

While the trial court refused to give the requested instruction, it did properly instruct the jury that if DeNuzio had demonstrated a prima facie case of workplace discrimination, then the burden would shift to Dr. Zekoff "to articulate a legitimate nondiscriminatory reason for terminating" her. It further instructed the jury that Zekoff could escape liability if he believed he had "acted for lawful reasons," and that the jury was not to substitute its own judgment for Zekoff's "even if [it] would have made a different business decision." Since the instruction given correctly stated the burden-shifting framework under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and was warranted by the evidence, the first assignment of error is overruled. *See Cromer v. Children's Hosp. Med. Ctr. of Akron*, 142 Ohio St.3d 257, 2015-Ohio-229, 29 N.E.3d 921, ¶ 22.

In a related assignment of error, Dr. Zekoff argues that the trial court erred in denying his summary-judgment and directed-verdict motions brought under the honest-

belief rule. Because genuine issues of material fact remained as to the reasonableness of Dr. Zekoff's proffered reasons for terminating DeNuzio, and reasonable minds could have come to more than one conclusion on the issue, the trial court did not err in denying the motions. *See* Civ.R. 50(A) and 56(C); *see also Eystoldt v. Proscan Imaging*, 194 Ohio App.3d 630, 2011-Ohio-2359, 957 N.E.2d 780, ¶ 18 (1st Dist.); *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). The fourth assignment of error is overruled.

In the two remaining assignments of error, Dr. Zekoff asserts that the trial court erred in admitting or excluding evidence. Because of the broad discretion granted to the trial court on these matters, we will not reverse its decision absent a clear abuse of that discretion. *See Werden v. Children's Hosp. Med. Ctr.*, 1st Dist. Hamilton No. C-040889, 2006-Ohio-4600, ¶ 66. An abuse of that discretion is shown when the court's decision is unreasonable, arbitrary, or unconscionable; that is, when the trial court issues a ruling that is not supported by a sound reasoning process. *See State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, citing *AAAA Ents., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). In applying the abuse-of-discretion standard, we are not free to substitute our judgment for that of the trial court. *See Morris* at ¶ 14.

First, Dr. Zekoff claims that the trial court erred by permitting a long-serving employee to testify as to her "belief" that Dr. Zekoff had terminated DeNuzio because he had lost all trust in her when he received the letter from DeNuzio's attorney. He argues that since the employee had no personal knowledge of Dr. Zekoff's reaction to the letter, the trial court erred in admitting her testimony. *See* Evid.R. 602. Since the employee's testimony was based upon her observations of him and her conversation with him about receipt of the letter, the trial court did not abuse its discretion in admitting the testimony.

See AAAA Ents., Inc. at 161; *see also Morris* at ¶ 14. The second assignment of error is overruled.

Dr. Zekoff next argues that trial court erred by prohibiting the jury from hearing recordings that DeNuzio had secretly made of two conversations with Dr. Zekoff. He sought to admit the recordings to impeach DeNuzio's testimony that Dr. Zekoff had screamed at her at work. Although the trial court identified an invalid reason for excluding the recordings, sound reasons existed to support the trial court's decision. Dr. Zekoff admitted at trial that he had raised his voice and had screamed at DeNuzio on occasion. At best the taped conversations would have demonstrated only that Dr. Zekoff had not raised his voice on those two occasions. Thus the trial court did not abuse its discretion in refusing to play the recordings for the jury. *See id.* The third assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DEWINE and **MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on September 28, 2016
per order of the court _____.
Presiding Judge